IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 215 OF 2006

Shri Vithal Dattaram Malvankar,
Shapora, Bardez, Goa. … Petitioner.

V/s.

1. Mormugao Port Trust,
Vasco, Goa.

2. Union of India, through
Secretary, Labour. … Respondents.

S.D.Lotlikar, senior counsel with Mr.S.Y.Thaly for the petitioner.

V.B.Nadkarni for respondent No.1.

CORAM : V.C. DAGA AND
N.A. BRITTO, JJ.

DATED : 7th August 2006.

P.C. :

Heard learned counsel for the rival parties.

Perused petition.

2. The petitioner in this petition is seeking writ of mandamus commanding respondent No.1 to issue letter of appointment to the petitioner as Gangworker contending that the petitioner's name was put on select-list and thereafter he was sent to medical examination; wherein he was found to be fit. Mr.Lotlikar, learned senior counsel appearing for the petitioner submits that once the petitioner is sent for medical examination and found to be fit then he ceased to be a person on the waiting-ling and is entitled to claim right of appointment. The submission made, in our view, is misplaced. Undisputedly the law is well settled under a catena of decisions including the case of ***Surindra Singh and others v. State of Punjab and another***, (1997) 8 SCC 488 that merely because the waiting list is prepared, once the vacancies already advertised are filled in, even though some more names remain in the waiting list, the said waiting

list cannot be used as a perennial source for recruitment in relation to the vacancies arising subsequent to the filling up of the vacancies in respect of which the waiting list was prepared at the time of selection of candidates for such vacancies. It is also well settled that the life of the waiting-list cannot be extended beyond the period prescribed in the rules.

3. It is not in dispute that the physical/ medical examination was conducted in the year 2001 but no appointment order was issued in favour of the petitioner. This petition is coming before this Court practically after five years from the date of medical examination. Waiting-list cannot be said to be alive for such a long period.

4. Mr.Lotlikar submits that the vacancies which occurred in the year 2000 will have to be filled in as per the unamended rules.

According to him, the rules to fill up the vacancies in the post of Gangworker have now been amended, as such the amended rules cannot be applied to the vacancies which were notified in the year 2000. He placed reliance on the judgment of the Apex Court in the case of ***P.Ganeshwar Rao v. State of Andhra Pradesh***, 1988 (Supp) SCC 740. The submission made and the reliance placed on the Apex Court judgment are also misplaced. Firstly, the aforesaid decision of the Apex Court in the case of ***P.Ganeshwar Rao***(supra) dealt with a question of promotional vacancies whereas the case in hand relates to the initial recruitment to the post of Gangworker. Secondly, the view taken by the Apex Court in the above referred judgment is solely based on the interpretation of the rule; wherein the word "arising" was interpreted by the Apex Court to mean that the said word qualified the word "vacancy" and, therefore, the view was taken that old vacancies are to be filled in as per the old rules. No such rule

is brought to our notice warranting such interpretation.

5. In the above view of the matter, petition is devoid of any substance. In the result, petition is dismissed in limine with no order as to costs.

(V.C. DAGA, J.)

(N.A. BRITTO, J.)